IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 695 OF 2006

MRS. MEGHNA RAMCHANDRA KOTTAWAR ..PETITIONER

Versus

M/s. SIDDHARAJ BUILDERS & DEVELOPERS & ORS. .. RESPONDENTS

Mr. R. S. Apte with A. A. Garge for petitioner

CORAM:-SMT. RANJANA DESAI, J.

DATED:- 31/3/2006

P.C.

. The petitioner is defendant 3 in Special Civil Suit No. 268 of 1992. Defendant 1 is M/s. Krishna Construction Company. Defendant No. 2 is Mr. Sham Dinkar Khare. Admittedly defendant 2 and the present petitioner are partners of M/s. Krishna Construction Company. Respondents 1 to 3 are original plaintiffs.

2. This suit is filed under Section 20 of the Arbitration Act, 1940 for appointment of Arbitrator. In the said suit, the petitioners filed an application praying that her name and the name of defendant 1 be deleted from the said suit.

The said application is rejected and hence this writ petition.

3. I have heard Mr. Apte, learned counsel appearing for the petitioner. Mr. Apte contended that the suit involves the plaintiff's claim to specific performance of the terms of the agreement for assignment dated 13/12/90. He pointed out that admittedly the petitioner has not signed on the deed of assignment. He pointed out that in the application filed by defednant 1 and the petitioner in the trial court, a specific contention is raised that the present petitioner has not signed on the deed of assignment. It is also pointed out that the plaintiffs have sent letter dated 6/12/1991 only to defeneant 2 and not to defendant 3. In the circumstances, according to Mr. Apte, defendants 1 and 3 could not have been impleaded as party defendants in the suit. Mr. Apte also referred to Order I Rule 10 (2) of the Code of Civil Procedure and contended that the court may at any stage of the proceedings strike out or add parties to a proceeding. He submitted that in the circumstances the trial court ought to have allowed the petitioner's application.

4. I am not impressed by the submission of Mr. Apte. Admittedly the present petitioner is a partner of M/s. Krishna Construction Company. Merely because she has not signed on the Deed of Assignment, prima facie it appears to me that she cannot absolve herself of any liabilities or avoid any obligations arising out of the partnership firm which is defendant 1. The application has been rightly rejected. No interference is necessary. Hence petition is dismissed.

5. However, it is made clear that all contentions raised by the parties are kept open.

(SMT. RANJANA DESAI,J.)